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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 514.

CHESTER A. ARTHUR, COLLECTO : OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

JOSEPH W. GODDARD AND FREDERICK N. GODDARD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 13, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 514.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

JOSEPH W. GODDARD AND FREDERICK N. GODDARD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

[SEAL.]

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Joseph W. Goddard and Frederick N. Goddard, plaintiffs, and Chester A. Arthur, defendant, a manifest error hath happened, to the great damage of the said Chester A. Arthur, defendant, as by his complaint appears, we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and seventy-six, in the said Supreme Court, to be then and there held, that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the tenth day of October, in the year of our Lord one thousand eight hundred and seventy-six.

JOHN I. DAVENPORT,
Clerk.

The foregoing writ is hereby allowed.

ALEX. S. JOHNSON, *Cir. J.*

2 (Indorsed:) U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against Joseph W. Goddard and Frederick N. Goddard, defendants in error. Writ of error. Filed Oct. 10, 1876.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States for the southern district of New York, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from one to 39, inclusive, contain a true and
3 complete transcript of the record and proceedings had in said court in the case of Chester A. Arthur, plaintiff in error, against Joseph W. Goddard and Frederick N. Goddard, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this eleventh day of October, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the said United States the one hundred and first.

[SEAL.]

JOHN I. DAVENPORT,
Clerk.

4 U. S. circuit court for the southern district of New York, in the second circuit.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings, in the city of New York, of the term of April, 1876, to wit, the 26th day of August, 1876.

Witness the honorable Alexander S. Johnson, one of the judges of the said circuit court.

JOHN I. DAVENPORT,
Clerk.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, the 27th day of October, 1874, before the judges of the circuit court of the United States
5 of America for the southern district of New York, in the second circuit, at the United States court buildings, in the city of New York, come Joseph W. Goddard and Frederick N. Goddard, by Prichard, Choate and Smith, their attorneys, and brought into the said court before the aforesaid judges thereof then there their certain declaration against Chester A. Arthur, being in custody, &c., of a plea of trespass on the case upon promises; which said declaration is as follows:

6 Circuit court of the United States for the southern district of New York, of the twenty-sixth day of October, as yet of the term of October, in the year eighteen hundred and seventy-four.

JOSEPH W. GODDARD & FREDERICK N. GODDARD
against
CHESTER A. ARTHUR. } No. 2.

SOUTHERN DISTRICT OF NEW YORK, *to wit:*

Joseph W. Goddard and Frederick N. Goddard, plaintiffs, come here into court, and by Prichard, Choate and Smith, their attorneys, suggest and give the court now here to understand and be informed, that heretofore, to wit, on the 5th day of August, 1874, last past, an action was commenced in the superior court of the city of New York, according to the laws of the State of New York and the rules and practice of said court, in favor and in the name of the said plaintiffs,
7 aginst the defendant therein, Chester A. Arthur, upon and for the same cause of action hereinafter set forth, and the summons therein was filed in the clerk's office of the said superior court. That the defendant afterwards, by his attorney, duly appeared in said action, and such proceedings were thereupon had; that afterwards, and on the 21st day of October, eighteen hundred and seventy-four, the said action was in due form of law removed, by writ of certiorari, for further prosecution and trial, into this court, according to the act of Congress in such case made and provided; and the clerk of the said superior court did thereupon return the said writ, with the summons aforesaid, and did file the same in this court, according to the course and practice
8 of this court. Said summons follows in these words, namely:

Superior court of the city of New York.

JOSEPH W. GODDARD AND FREDERICK N. GODDARD, plaintiffs,
against
CHESTER A. ARTHUR, DEFENDANT.

To the defendant above named:

You are hereby summoned and required to answer the complaint in this action which will be filed in the office of the clerk of the above-entitled court at the court-house in said city, and to serve a copy of your answer to said complaint on the subscribers at their office, at No. 49 Wall street, in said city, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaint-
9 iffs in this action will take judgment against you for the sum of five hundred dollars with interest from the twenty-first day of May, one thousand eight hundred and seventy-four, besides the costs and disbursements of this action.

Dated Aug. 4th, 1874.

PRICHARD, CHOATE AND SMITH,
Plaintiffs' Attorneys.

Which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore, let the further proceedings and trial in this action against the defendant be continued in this court.

And the plaintiffs, accordingly, by their attorney aforesaid, complain of the defendant herein in a plea of trespass on the case.

For that whereas the said defendant, on the tenth day of April, in the year eighteen hundred and seventy-four, at the city of
10 New York, in the southern district aforesaid, was indebted to the said plaintiffs in the sum of two hundred dollars gold for money before that time lent, and advanced by the said plaintiffs to the said defendant, and at the special instance and request of said defendant. And for other money by the said plaintiffs before that time laid out and expended for the said defendant and at the request of the said defendant.

And for other money by the said defendant before that time had and received to and for the use of the said plaintiffs. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and
11 truly to pay unto the said plaintiffs the said sum of money in the count mentioned when the defendant should be thereunto afterwards requested.

And whereas, also, the said defendant afterward, to wit, on the same day and year, and at the place aforesaid, accounted together with the said plaintiffs of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiffs, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the said plaintiffs in the further sum of two hundred dollars, gold, as aforesaid. And being so found in arrear and indebted to the said plaintiffs, the said defendant, in the consideration thereof,
12 afterwards, to wit, on the same day and year, and at the place

aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money last mentioned when the said defendants should be thereunto afterwards requested.

Nevertheless the said defendant (although often requested, &c.,) has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same, or any part thereof, to the said plaintiffs, the said defendant has hitherto wholly refused and still does refuse, to the damage of the said plaintiffs of two hundred dollars, gold, and thereof the plaintiffs bring suit, &c.

PRICHARD, CHOATE AND SMITH,
Attorneys for Plaintiffs.

13 (Endorsed:) U. S. circuit cour', southern dist. of New York. Joseph W. Goddard and Frederick N. Goddard vs. Chester A. Arthur. Declaration. Prichard, Choate and Smith, pl'ffs att'ys, 49 Wall st., N. Y. Filed Oct. 27, 1874.

14 And the said defendant, Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury when, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs in this suit have above thereby declared against the said defendant; and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

Therefore the issue above joined is ordered by the said court to be tried at the term of the said court appointed to be held at the city of New York on the third Monday of October, 1875.

And now, at this day, to wit, the 9th day of February, 1876, being as yet of the said October term, before the honorable William J. Wallace, judge of the district court of the United States of America for the
15 northern district of New York, in the second circuit, at the United States court-rooms, in the city of New York, came as well the above-named plaintiffs as the above-named defendant, by their respective attorneys, and a trial of the said issue before a jury having been waived by the aforesaid plaintiffs and defendant by written stipulation, and the said issue having been tried before said judge, he has sent hither his record of the proceedings had before him and the following special findings of fact and conclusion of law.

16 U. S. circuit court, southern district of New York.

JOSEPH W. GODDARD & FREDERICK N. GODDARD,
vs.
CHESTER A. ARTHUR.

I, the undersigned, judge of the district court of the United States for the northern district of New York, before whom this case was tried at a stated term of the circuit court of the United States held in and for the southern district of New York, in the second circuit, at the court-rooms in the city of New York, on the 9th day of February, 1876, do hereby make the following special findings of fact in this case; a trial by jury having been waived by written stipulation between the parties.

At the times hereinafter mentioned, the plaintiffs were part-
17 ners in trade, doing business in the city of New York under the firm name of Goddard and Brother, and the defendant was at the

times aforesaid the United States collector of customs in and for the port of New York.

In 1874 the plaintiffs imported into the United States under the firm-name of Goddard and Brother, two cases of goods marked W ◇9◇ F, numbered 575 and 576, as described in the invoice of said goods, dated January 24, 1874, and put in evidence.

The plaintiffs entered said goods at the New York custom-house at the net price stated in said invoice, francs 8,494.30, adding the proper and customary charges, and declared on the entry as follows:

"Cash not paid on these goods, but are passed to our account and subject to interest at 6 % per annum.

"GODDARD & BROTHER."

18 The said net price, fr's 8,494.30, was the actual market value of said goods at the time of their exportation in the principal markets of the country from which they were exported, and said goods were procured by the plaintiffs by purchase, and by the terms of the agreement under which they were bought the said net amount of fr's 8,494.30 was charged to the plaintiffs by the party from whom they bought the same as of the date of the invoice, with interest at the rate of six per cent. per annum, and thereafter, on or about March 5, 1874, the said account was paid by the plaintiffs, including interest on said charge for said goods. The appraisers made the following return in writing on the invoice: "Discount for cash disallowed. Importer states on entry that cash was not paid."

19 Thereupon, on the 9th day of April, 1874, the collector determined that the discount of 2 % must be disallowed, and fixed the value of said goods for the purpose of ascertaining the duty chargeable thereon.

Thereupon, on the same plaintiffs paid under protest the duty on the said amount of the discount, the amount of said duty being $14.91, gold, and on the same day filed with the collector their written protest, a copy of which is hereto annexed marked "Exhibit B," and thereafter, on the 2d day of May, 1874, the plaintiffs appealed from said decision to the Secretary of the Treasury. A copy of their said appeal is hereto annexed, marked "Exhibit C." The Secretary of the Treasury affirmed the decision of the collector on the 18th of July, 1874. A copy of his decision is hereto annexed, marked "Exhibit D."

20 The suit was commenced against the defendant, the said collector, August 5th, 1874.

The interest on said sum of $14.91 from the date of the payment thereof to the date of these findings is $2.41; for which sum of $14.91 in gold and $2.41 in currency the plaintiffs are entitled to judgment against the defendant, with their costs and disbursements to be taxed.

Dated August 19, 1876.

W'M J. WALLACE,
U. S. Dist. Judge.

(Endorsed:) No. 2. U. S. circuit court, so. dist. of N. Y. Joseph W. Goddard et al. vs. Chester A. Arthur. Findings.

21 EXHIBIT A.

two S
'ess'rs Goddard & Brother, New York, their Havre. Republic.

One case containing—

W F
G
575

14.20	grosses of 120.90 M. extra Sarce B. silk braids	19.96		399.20
16.20	" " " " " " " " "	22.81		456.20
18.40	" " " " " " " " "	25.67		1,026.80
20.20	" " " " " " " " "	25.82		570.40
14.10	" " " " " " double "	32.34		323.40
9.15	" " " " real Mohair fine braids	28.52		427.80
10.20	" " " " " " " "	31.62		633.60
11.10	" " " " " " " "	34.85		348.50
12.20	" " " " " " " "	38.02		760.40
9.10	" " " " Mohair braid, 2 fils	22.58		225.80
10.20	" " " " " " " "	25.08		501.60
12.10	" " " " " " " "	30.10		301.00
	Weight of Mohair braids, 129¼		5,974.70	
	Allowance		502.40	
			5,472.30	
	Disc't, 4%		218.90	
				5,253.40
	Forward			5,253.40
22	Brought			5,253.40

576 One case containing—

427.30	grosses white pearl button, 6 lines	25		750
776.10	" " " " " "	20		200
777.15	" " " " " "	20		300
110.20	" " " " " "	20		400
778.5	" " " " " "	20		100
13	" black & white pearl buttons, 5½, 1st choice	6		78
35	" " " " " 6 "	7		245
7	" " " " " 5½, 2d "	2.50		17.50
15	" " " " " 6 "	3		45
200.25	" black pearl buttons, 6½ lines	1.75		43.75
" 50	" " " " 7 "	2.10		105
" 50	" " " " 7½ "	2.50		125
				2,409.25
	Disc't, 4%			96.35
				2,312.90
141	Grosses Mohair Soutache 6½ lines	4.75	669.75	
63	" " 8½ "	7.25	456.75	
			1,126.50	
	Cut for buttons, disc't 2%		22.55	
				1,103.95
	Weight lbs. 31½.			3,416.85
	Forward			8,670.25
23	Brought			8,670.25
	Discount for cash on gross amount, 2%, 8,766.60			175.30
	Fr's			8,494.95

Terms cash. If not paid cash, interests to be added at the rate of 6 per cent.
E. & O. E.
PARIS, 24 *January*, 1874.

24 EXHIBIT B.

NEW YORK, *April 9th*, 1874.

Hon. CHESTER A. ARTHUR,
Collector of the Port of New York:

SIR: We hereby protest against the payment of the sum of $14.91, duty charged by you in addition to the sum of $751.83 upon the goods contained in cases W G F 575, 576 contained in entry from S. S. Republic, from Liverpool, Feb. 24, 1874, by reason of the disallowance by you of the discount of 2% on fr's 8,670.75, the price of said goods, and against the disallowance by you of said discount in the liquidation of the duty on said goods, and we claim that said discount of 2% appears upon the invoice to be, and was in fact, a discount actually conceded and allowed, and that therefore no duty is chargeable thereon,
25 and that said amount of $14.91 so charged is in excess of the duty properly chargeable on said goods by reason of said discount being disallowed by you in liquidating the duty thereon.

And you will please take notice that we pay the said sum of $14.91, so exacted by you, under protest, and claim to have the same refunded.

Very respectfully, yours,
(Signed) GODDARD & BROTHER.

26 EXHIBIT C.

NEW YORK, 2 *May*, 1874.

To the Hon. W'M A. RICHARDSON,
Secretary of the Treasury.

SIR: We hereby appeal to you from the decision of the collector at this port requiring us to pay the sum of $14.91 in addition to the sum of $751.30, duty upon the goods contained in cases W G F 575 & 576, which were included in entry by us per S. S. Republic from Liverpool, Feb. 24, 1874, which exaction was founded upon the disallowance in the liquidation of such duty by said collector of the discount of two per cent. on $8,670\frac{25}{100}$ francs, the nominal price of said goods, from which disallowance we also appeal.

The said discount of two per cent. is actually conceded and allowed to us by the sellers of said goods, and the same is so stated in
27 the invoice. It was not a discount conditioned upon the immediate payment or otherwise, howsoever, but was the method used by the sellers of computing the cash value of the goods; and it was on that cash value only that interest was to be charged to time of payment.

We submit to you that for this reason no duty was chargeable upon said two per cent. of the amount of the invoice is in excess of the duty lawfully chargeable on said goods.

We therefore respectfully call on the honorable Secretary of the Treasury to reverse the aforesaid decision of the collector of New York, and to cause the excess of duty paid by us under protest, on said goods, to be refunded to us.

We are, very respectfully, your obed't servants,
GODDARD & BROTHER.

28 EXHIBIT D.

H. D.

TREASURY DEPARTMENT,
July 18, 1874.

GENTLEMEN: I am directed by the Secretary to acknowledge the receipt of your appeal (No. 4,644 B) dated May 9, 1874, from the decision of the collector of the port of New York, assessing duty on certain goods imported per Republic, February 24th, 1874, without allowing a discount of two per centum from the invoice-price, and to say, that on full consideration of the case, the department has affirmed the decision of the collector, who has been advised accordingly, and to whom you are referred for particulars.

Very respectfully,

J. F. HARTLEY,
Assistant Secretary of the Treasury.

To Mess'rs GODDARD & BROTHER,
New York.

29 (Endorsed:) No. 2. U. S. circuit court, so. dist. of New York. Joseph W. Goddard et al. vs. Chester A. Arthur. Findings. Prichard, Choate & Smith, pl'ffs' att'ys, 49 Wall st., N. Y.

30 in manner and form as the said plaintiffs have above claimed against the said defendant. And the said judge assesses the damages of the said plaintiffs, by reason of the premises, over and above their costs and charges by them about their suit in this behalf expended, at fourteen & $\frac{91}{100}$ dollars, gold coin, and two and $\frac{41}{100}$ dollars, currency, and for their costs and charges to six cents.

Therefore it is considered that the said plaintiffs do recover against the said defendant their said damages, costs, and charges, by the said judge assessed, in manner and form aforesaid. And also twenty-four $\frac{55}{100}$ dollars, for their costs and charges, by the court here adjudged to the said plaintiffs, with their assent, which said damages, costs, and charges amount in the whole to fourteen $\frac{91}{100}$ dollars, gold coin, and twenty-six $\frac{96}{100}$ dollars, currency.

31 And the said defendants in mercy, &c.

Judgment signed this twenty-sixth day of August, 1876.

J. M. DENEL, *Dep'y Clerk.*

(Endorsed:) No. 2. U. S. circuit court, so. dist. of New York. Joseph W. Goddard et al. vs. Chester A. Arthur. Judgment record. Prichard, Choate & Smith, att'ys for pl'f, 49 Wall st., N. Y. Filed August 26, 1876.

32 United States circuit court, southern district of New York.

JOSEPH W. GODDARD ET AL.
against
CHESTER A. ARTHUR.

WALLACE, J.:

The invoice upon which plaintiffs entered an importation of merchandise was as follows:

" Merchandise, fr's	8,670 25
(" Discount for cash on gross am't, 2%)	175 30
" Fr's	8,494 95

(" Terms cash; if not paid cash, interest to be added at the rate of 6 per cent.")

The collector refused to allow the two per cent. discount, and the merchandise was appraised as of the invoice price at 8,670.25 franks.

This action is brought to recover the duty exacted on the two per cent. disallowed, and the only question is whether or not the discount should have been allowed in ascertaining the invoice price, it being conceded that the net invoice price was the actual market value of the goods in the country of exportation.

As I construe the invoice, it evidences a sale for cash at the
33 price 8,494.95 franks.

The purchaser has no term of credit, but the price is due on delivery, and for any delay in making payments the interest is stipulated at the rate of six per cent.

The transaction is materially different from a sale on credit, where, by the terms, a discount is to be allowed if cash is paid before the term of credit expires, and is therefore distinguishable from Ballard vs. Thomas (19 How., 382); in such case the purchaser has an option to pay the regular price for the goods or to satisfy the contract at a reduced sum by performance at an earlier day than the contract day. In the present case, if the rights of the parties are to be controlled by the contract, evidenced by the invoice (and no other evidence was presented to the collector or on the trial), the purchaser has no action, and the vendors can in no event exact more than the nett price and interest.

It is urged that the apprisal is conclusive as to the value of the merchandise, and, even if erroneous, in the absence of fraud, author-
34 ized the collector to exact the amount which he required to be paid.

But the return of the appraisers show that the market-value of the merchandise was not a subject of inquiry. They attempt to return the invoice-price, and the form of the return is such as to present simply the question for the consideration of the collectors whether the gross or the net price was the invoice price.

Judgment for plaintiff.

35 (Indorsed:) U. S. circuit court, southern district of New York. Joseph W. Goddard et al. vs. Chester A. Arthur. Opinion. Filed June 22nd 1876.

36 Supreme Court of the United States. Of October term, in the year of our Lord one thousand eight hundred and seventy-six.

CHESTER A. ARTHUR, PLANTIFF IN ERROR,
vs.
JOSEPH W. GODDARD AND FREDERICK N. GODDARD.

Afterwards, to wit, on the second Monday of October in this same term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said Chester A. Arthur, by George Bliss, his attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given was given for the said defendants against the said plaintiff.

Whereas by the law of the land, the said judgment ought to have been given for the said plaintiff against the said defendants. And the said plaintiff prays that the judgment aforesaid for the error
37 aforesaid, and other errors in the record and proceedings aforesaid, as the same appears more fully herein, may be reversed, annulled, and altogether held for nothing; and that he, the plaintiff, may be restored to those things which he has lost by reason of the said judgment.

GEORGE BLISS,
U. S. Attorney for Plaintiff in Error.

(Endorsed:) U. S. Supreme Court. Chester A. Arthur, pl'ff in error, versus Joseph W. Goddard & Bro. Assignment of error. George Bliss, U. S. att'y, for pl'ff in error. Filed Oct. 10, 1876.

38 UNITED STATES OF AMERICA, *ss:*

To Joseph W. Goddard and Frederick N. Goddard, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, eighteen hundred and seventy-six, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Chester A. Arthur is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this tenth day of October, in the year of our Lord one thousand eight hundred and seventy six.

ALEX. S. JOHNSON, *Cir. J.*

39 (Indorsed:) U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against Joseph W. Goddard & al., defendants in error. Citation.

Due & timely service of the within citation is hereby admitted.
N. Y., 10 Oct., 1876.

PRICHARD, CHOATE & SMITH,
Att'ys for Def'ts in Error.

40 Supreme Court of the United States.

CHESTER A. ARTHUR, PL'FF IN ERROR,
vs.
JOSEPH W. GODDARD AND FREDERICK N. GODDARD.

And afterwards, to wit, on the second Monday of October, in October term, in the year of our Lord one thousand eight hundred and seventy-six, the said Joseph W. Goddard and Frederick N. Goddard, by William G. Choate, their attorney, freely come here into court and say, that there is no error, either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid, and they pray that the said Supreme Court of judicature, before the justices thereof, no where, may proceed to examine, as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things *be* affirmed, &c., with costs.

WILLIAM G. CHOATE,
Attorney for Def'ts in Error.

(Indorsed) No. 811. U. S. Supreme Court. Chester A. Arthur, pl'ff in error, vs. Joseph W. Goddard et al., def'ts in error. Joinder in error. William G. Choate, att'y for def'ts in error, 49 Wall st., N. Y. Filed 18 October, 1876.

(Indorsement on cover:) No. 514. Chester A. Arthur, collector of the port of New York, pl'ff in error, vs. Joseph W. Goddard & Frederick N. Goddard. S. New York C. C. U. S. Filed 13th October, 1876.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHESTER A. ARTHUR, COLLECTOR, &C.,
vs.
JOS. W. GODDARD & ANOTHER. } No. 514.

ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHESTER A. ARTHUR, COLLECTOR, &C., *vs.* JOS. W. GODDARD & ANOTHER. } No. 514.

ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

Upon certain importations Goddard & Brother were, upon the invoices, credited with a 2 per cent. discount for cash. They did not pay cash for the goods, but paid interest on the bill. (Record, 5, 6, 7.) The appraisers and collector disregarded the so-called "discount for cash" in fixing the dutiable valuation. This suit was brought to recover the amount of the alleged overvaluation. Upon the facts, the judge gave judgment for the plaintiffs.

The error assigned is that the facts do not support the judgment.

BRIEF.

I.

It was *not*, in law or fact, a sale for cash, but on credit. (Ballard *v.* Thomas, 19 Howard, 382.) The discount for cash was to be made only where cash was paid.

II.

The appraisers' valuation was conclusive.

EDWIN B. SMITH,
Assistant Attorney General.

Supreme Court of the United States.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

JOSEPH W. GODDARD AND FREDERICK N. GODDARD.

No. 514.

BRIEF OF COUNSEL FOR DEFENDANTS.

WM. G. CHOATE, FOR DEFENDANTS IN ERROR.

Mining Record Press, 60 Broadway, N. Y.

Supreme Court

OF THE UNITED STATES.

CHESTER A. ARTHUR, Collector of the Port of New York, *Plaintiff in Error,* *vs.* JOSEPH W. GODDARD and FREDERICK N. GODDARD, *Defendants in Error.*	No. 514.

Brief of Counsel for Defendants in Error.

Statement of Case.

In Error to the Circuit Court of the United States, for the Southern District of New York:

The defendants, Joseph W. Goddard and Frederick N. Goddard, on the 5th day of August, 1874, commenced an action in the Superior Court of the City of New York against the plaintiff in error, laying their damages at five hundred dollars (record p. 2, summons p. 3.) The cause was removed by the plaintiff in error into the Circuit Court of the United States in October, 1874, and there these de-

fendants filed their declaration in assumpsit on the common counts for money lent, paid, laid out and expended, had and received, and on an account stated (declaration, record, p. 3.) The plaintiff in error pleaded the general issue (Plea, Record, p. 4). A jury trial was waived by written stipulation (Record, p. 4,) and a trial was had before the Judge, who made special findings of fact and conclusions of law (Findings, Record, pp. 4, 5, fols. 16-20.)

The facts found are in substance as follows:

The defendants in error (plaintiffs below) were partners in trade, doing business in the city of New York, and the plaintiff in error was the Collector of the Port of New York.

In 1874 the defendants in error imported under the firm name of Goddard & Brother certain goods, which they entered at the New York Custom House at the net price stated in the invoice, "francs 8,494.-95," adding the proper charges, and they declared on the entry as follows: "Cash not paid on these goods, but are passed to our account, and subject to interest at 6 per cent. per annum.

GODDARD & BROTHER."

The invoice (Exhibit A, Record, p. 5,) after giving the details of the goods, and bringing forward the gross amount as frs. 8,760.25, concluded as follows:

Brought	8670 25
Discount for cash on gross amount, two per cent. on 8,766 60	175 30
Fr's	8494 95

The said net price, fr's 8,494.95, was the actual market value of the goods, and the goods were procured by purchase, and by the terms of the agree-

ment under which they were bought this net amount, fr's 8,494.95, was charged to the defendants by the vendor as of the date of the invoice, with interest at the rate of six per cent. per annum, and in March, 1874, the account was paid by the defendants, with interest.

The appraisers made the following return on the invoice: "Discount for cash disallowed. Importer states on entry that cash was not paid."

The two per cent. discount was accordingly disallowed. Defendants paid the duty on the same, amounting to $14.91 gold, under protest. On appeal the Secretary of the Treasury affirmed the decision of the Collector. (Findings, p. 5. Invoice, Exhibit A., p. 6. Protest, Exhibit B., p. 7. Appeal, Exhibit C., p. 7. Decision, Exhibit D, p. 8.)

On these facts the Judge found that defendants were entitled to recover the duty paid on the amount of the discount, with interest and costs. (Findings, p. 5.) Judgment was entered accordingly. (Record, p. 8.)

Judge Wallace gave a written opinion. (Opinion, p. 9.)

Two points were made upon the trial by the plaintiff in error:

1. That the discount was not properly deducted to make the "invoice value."

2. That the report of the appraisers was conclusive evidence that the dutiable value was the gross amount of the invoice, fr's 8,670.25.

No question was made as to the regularity of the protest or appeal, or the suit being seasonably commenced.

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POINTS.

First Point.

The true invoice price of the goods was upon this invoice fr's 8,494.95, *and the defendants were entitled to have the discount of two per cent. allowed in computing the invoice value.*

1. The statute provides "that the duty shall not be assessed upon an amount less than the invoice or entered value, any act of Congress to the contrary notwithstanding."

Act of 1865, Ch. 80, § 7. 13 Stat., p. 494.

There being no question as to actual value or entered value, the question therefore is what was within the meaning of this statute the "*invoice value*" of these goods.

The "invoice value" can mean nothing else than the value appearing by or stated in the invoice.

The right of the importer to have allowed to him all discounts actually conceded plainly appears on the statutes. Thus the purchaser or his agent is required to declare on the invoice before the shipment "that no discounts, bounties or drawbacks are contained in said invoice but such as have actually been allowed thereon."

Stat. 1863, C. 76, § 1. 12 Stat., p. 737.

It is difficult to argue so self-evident a proposition as that the net price appears upon or is stated in this invoice to be the price or value of the goods.

Suppose, instead of stating a price and taking from it a discount of two per cent., the invoice had given the net price simply with the note at foot—"Terms cash; if not paid cash, interest to be added

at the rate of six per cent." —would there then be any doubt that the price so given must be held to be the invoice price? There would be no other possible price to be taken as the invoice price. Since it is wholly uncertain how long the interest would run, or when the goods would be paid for, no particular amount of interest could be added to make such invoice price.

Besides, it is perfectly proper and competent for merchants to make just such a trade for goods and for the seller fixing the price, as of the time of the invoice or sale, to let the money lie bearing interest till he wants it or the other party desires to pay it. The interest in such case is merely for the use of the money; it is in no sense a part of the price of the goods.

If it were true that the interest must be included in the price for entry, then it would result either that the importer must withhold the goods from entry till the account is paid (which would be unlawful and quite contrary to the whole policy and tenor of the revenue law) or else the Government must fix on a certain part of the interest, as for a month, two months, six months, as the part to be added to make the invoice price. But it is obvious that there is no basis or reason for this, and no guide as to the amount or time to be added.

In fact the interest to be charged in account to the purchaser, has no relation whatever to the two per cent. discount for cash. And there can be made no distinction between this invoice and one giving merely the net price and expressing the further agreement of the parties that the price is to bear interest till paid.

The allowance to the importer of discounts actually conceded is recognized as proper and within

the true meaning of "invoice price," and also as a proper deduction in ascertaining the "actual market value."

Gray *v.* Lawrence, 3 Blatchf., 117.

The simple test is whether the discount claimed *is actually conceded and appears on the invoice.*

Same case.

If it reduces the value below actual market value of course it is not allowed.

Reiss *v.* Redfield, 4 Blatchford, 381.

3. The case of *Ballard* v. *Thomas*, 19 Howard U. S., 382, is no authority to the contrary. In that case the discount was not in fact conceded upon the face of the invoice. It was merely optional with the purchaser to take it or not. The price of the goods named was the larger price with the right on the part of the purchaser if he chose, to pay cash and then to have a discount, which discount exceeded the rate of interest for the period of the credit granted. There was in fact stated on the invoice no other price than the gross price as the price of the goods agreed upon. The net price was a mere possibility. Even if an alternative price had been named as for instance *a certain price at four months, or the same less two and one-half per cent. for cash*, it might well be claimed by the Government that both prices named being "invoice prices" that is prices that the purchaser was in one or the other event to pay, prices expressed in the invoice as prices, the Government should have the benefit of the larger of the two. Perhaps that is substantially the meaning of the invoice in *Ballard* v. *Thomas;* at any rate in the case at bar there was but one price given as the price of the goods, and that was the net price.

On the other hand in the present case the gross price named appears on the invoice to have been a purely nominal price, named only as a means of arriving at the actual price through a computation of discounts, and was under no circumstances to be the price to be paid for the goods, or the basis to reckon interest on.

Second Point.

The return of the appraisers does not establish the "actual market value" at the gross price given in the invoice, but simply is a determination on their part that in computing the "invoice value" the discount is not to be deducted.

The Statute provides that "it shall be the duty of the collector to cause the actual market value or wholesale price thereof, at the period of the exportation to the United States, in the principal markets of the country, from which the same shall have been imported into the United States, to be appraised, and such appraised value shall be considered the value upon which the duty shall be assessed" (Act of 1865, ch. 80.—13 Stat., p. 493, § 7).

The return of the appraisers is in practice an informal report, written on the invoice. Any form is sufficient which indicates that they have done their duty, and which indicates the result of their examination. A common form is "value correct."

In this case they reported: "Discount for cash disallowed. Importer states on entry that cash was not paid."

There is here nothing said expressly of "*market value*," and the question is what is the fair meaning of the return. What did they mean to decide?

It must be assumed that they intended to do their duty, and that the report was designed to be a return within the requirements of the Statute.

The papers before them were the entry and the invoice. The entry was at the value of frs.8,494.95. The invoice foots up and states the value at frs. 8,494.95. On that invoice, so stating the value, they wrote their return as given above.

The inference seems irresistible that what they mean is: "We object to this value, frs.8,494.95, *because, and only because*, the discount deducted not being for cash is improperly deducted." It was unnecessary therefore for them to speak expressly of the "value." That appeared on the invoice which they make a part of their return by writing their report upon it. The deduction of the 2 per cent. is disallowed specifically as a *discount*, and not for any other reason. *Expressio unius, exclusio alterius.* The amount of the discount is not added by them to make market-value.

The report was, in effect: "Value correct, but the discount should not be allowed, not being a cash discount."

If the construction is doubtful, the importer should have the benefit of the doubt, because it is found as a fact that the value, after deducting the discount, was the "actual value." (Record, p. 5, fol. 18.)

Third Point.

The defendants in error should have judgment, with costs.

WM. G. CHOATE,
Of Counsel for Defendants in Error.